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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
KIDWELL, MICHELE M	
ART UNIT	**PAPER NUMBER**
3761	9

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/007,433	JACKSON ET AL	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 December 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-24,26,28-35 and 37-70* is/are pending in the application.

4a) Of the above claim(s) *11-22,24 and 47-70* is/are withdrawn from consideration.

5)☒ Claim(s) *35 and 37-46* is/are allowed.

6)☒ Claim(s) *1-2,4-10,23,26,28-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

This application contains claims 11 – 22, 24 and 47 – 70 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 – 4, 6 – 10, 23, 25, 28 and 30 – 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolfe et al. (4543098).

With respect to claims 1, 3, 23 and 25, Wolfe discloses a tampon that has cellulosic fibers (see claim 4). In col. 5, lines 3 – 6 Wolfe discloses a density that satisfies the claimed range. Wolfe discloses that the tampon absorbs about 4 grams per gram of tampon so based on the fact that the tampon weighs 2.7 grams, the absorbency would be about 10.8 grams, which satisfies the claimed absorbency value.

For claims 4 and 28, based on the well-known equation of density = mass/volume and the density disclosed by Wolfe and the mass disclosed by Wolfe, one can arrive at a volume of 10.8cc.

For claims 6 and 30, the limitation is considered to be inherent. The tampon of Wolfe inherently has the claimed diameter.

For claims 7 – 9 and 31 – 33, the examiner considers Wolfe to disclose the claimed structure as far as cross pad construction, radial construction and flat pad construction. These terms have no definite meaning in the art and are considered very broad.

For claims 10 and 34, the coverstock is 16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 5, 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfe et al (4543098).

Wolfe discloses the invention substantially as claimed.

For claims 2 and 26, Wolfe does not disclose that the cellulosic fibers are made from the recited materials of the Markush grouping. The recited Markush grouping is reciting materials that are very well known and old in the tampon art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the recited materials because the recited materials are very old and well known in the art and one of ordinary skill in the art would be motivated to use the recited materials because they are already known as being useful and non-toxic to the human body when used in tampons.

For claims 5 and 29, Wolfe does not specifically recite the amount of cellulosic fiber present in the tampon. However, it would have been obvious to one of ordinary skill in the art to use the claimed amount of cellulosic fiber to adjust the absorbency characteristics of the tampon. Reciting the amount of cellulosic fiber in the tampon in view of the fact that Wolfe discloses having cellulosic fibers is not considered to be sufficient to be patentably distinct over Wolfe.

Response to Arguments

Applicant's arguments filed December 22, 2003 have been fully considered but they are not persuasive.

In reply to the applicant's argument that Wolfe requires an integrated cover to achieve the density and absorbency disclosed whereas the claimed pledget realizes the claimed density and absorbency without a cover, the examiner disagrees.

Wolfe discloses that the absorbent pledget includes a thermoplastic web. While the purpose of the web is to promote the transfer of menses (col. 3, lines 26 – 27), the examiner contends that absorbency is achieved with or without the use of the transfer layer. The transfer layer is a thermoplastic layer; therefore the layer will not increase the absorbent capacity of the pledget. The pledget alone measured 2.7 grams (col. 5, lines 26 – 27) and Wolfe discloses the use of either the thermoplastic cover layer or the microfiber layer did not affect the absorbency of the menses (col. 5, lines 21 – 22). The absorbency in each instance was approximately 4 grams absorbed **per weight of the absorbent** (emphasis added). The thermoplastic cover layer cannot be considered part of the absorbent because it is a layer that does not permit absorbency. Therefore, it can be reasonably assumed that the absorbency relies upon the absorbent material (the pledget alone) and based on the pledget weighing about 2.7 grams and absorbing 4 grams per weight of the absorbent, the absorbent capacity would be about 10.8 grams, falling within the claimed range.

Additionally, the examiner contends that Wolfe uses material that is identical to that material used by the applicant (i.e., cellulosic fibers) with a density identical to the density being claimed which would ultimately yield a pledget with the claimed absorbency without the use of a transfer layer.

Wolfe discloses that the density of the pledget including the transfer layer is between 0.15 and 0.25 g/cc (col. 5, lines 3 – 5). Wolfe also discloses the density of the cover layer to be 0.3 g/cc (col. 2, lines 15 – 18) using the formula well known in the art that Density (g/cc) = Basis weight (gsm)/(10,000xCaliper (cm)). Therefore, Wolfe discloses the density of the absorbent pledget alone to be between 0.12 and 0.22, both of which fall within the claimed range.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., two rectangular pads laid on one another at a 90° angle to form an 'X' or cross pattern or a long rectangular pad rolled to form a cylindrical or radial pledget) are not recited in the rejected claim(s).

The terms "cross –pad construction", "radial construction" and "flat – pad construction" have not been defined by the instant specification. Where applicant acts as his or her own lexicographer to specifically define a term, the written description must clearly define the claim term and set forth the definition so as to put one reasonably skilled in the art on notice as to how the applicant intends to define that claim term.

With respect to the applicant's argument that it would not have been obvious to adjust the amounts of cellulosic fibers in Wolfe, the examiner disagrees.

It would have been obvious to one of ordinary skill in the art to adjust the amount of cellulosic fiber used in the tampon of Wolfe since it has been held that where the general conditions of a claim are disclosed in the prior art (i.e., the use of cellulosic

fibers to form a tampon) discovering the optimum or workable ranges involves only routine skill in the art.

Further, the examiner contends that the adjustment of cellulosic fibers would have at least been obvious to provide for making the tampon available in the absorbencies that have been mandated by the FDA (i.e., lite, regular, super, etc.)

Allowable Subject Matter

Claims 35 and 37 – 46 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.
See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele Kidwell
Michele Kidwell
March 6, 2004

JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
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